Supreme Court, U.S.
FILED
JAN 7 1998
CLERK

(4)

No. 97-743

In the Supreme Court of the United States

OCTOBER TERM, 1997

JAMES R. KING, APPELLANT

v.

STATE BOARD OF ELECTIONS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

MOTION TO AFFIRM

SETH P. WAXMAN
Solicitor General
BILL LANN LEE
Acting Assistant Attorney General
LAWRENCE G. WALLACE
Deputy Solicitor General
MATTHEW D. ROBERTS
Assistant to the Solicitor General
MARK L. GROSS
LOUISE A. LERNER
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

33 pp

QUESTIONS PRESENTED

1. Whether the three-judge district court correctly held that Illinois' majority-Hispanic Congressional District Four does not violate the Equal Protection Clause.

2. Whether the district court applied a proper standard of review to the evidence.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	12
Conclusion	29

TABLE OF AUTHORITIES

Cases:

Adarand Constructors, Inc. v. *Peña*, 515 U.S. 200 (1995)	13
Bush v. *Vera*, 116 S. Ct. 1941 (1996)	*passim*
Colegrove v. *Green*, 328 U.S. 549 (1946)	2
Connor v. *Finch*, 431 U.S. 407 (1977)	28
Duignan v. *United States*, 274 U.S. 195 (1927)	18
Gingles v. *Edmisten*, 590 F. Supp. 345 (E.D.N.C. 1984), aff'd in part, rev'd in part *sub nom. Thornburgh* v. *Gingles*, 478 U.S. 30 (1986)	20
Growe v. *Emison*, 507 U.S. 25 (1993)	17
Hastert v. *State Bd. of Elections*, 777 F. Supp. 634 (N.D. Ill. 1991)	*passim*
Illinois Congressional Districts Reapportionment Cases, In re, No. 81-C-3915 (N.D. Ill. Dec. 3, 1981), aff'd mem. *sub nom. Ryan* v. *Otto*, 454 U.S. 1130 (1982)	3
Johnson v. *De Grandy*, 512 U.S. 997 (1994)	15, 16, 18
Ketchum v. *Byrne*, 740 F.2d 1398 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985)	5
King v. *State Bd. of Elections*, 117 S. Ct. 429 (1996)	12
Lawyer v. *Department of Justice*, 117 S. Ct. 2186 (1997)	29
Miller v. *Johnson*, 515 U.S. 900 (1995)	10, 13, 14
Shaw v. *Hunt*, 116 S. Ct. 1894 (1996)	2, 13, 19, 21, 27
Shaw v. *Reno*, 509 U.S. 630 (1993)	9, 14, 21

Cases—Continued: Page

Skolnick v. *State Electoral Bd.*, 336 F. Supp. 839 (N.D. Ill. 1971) 3
Thornburg v. *Gingles*, 478 U.S. 30 (1986) 8, 16
United States v. *Paradise*, 480 U.S. 149 (1987) 28
United States v. *Virginia*, 116 S. Ct. 2264 (1996) 27
Wesberry v. *Sanders*, 376 U.S. 1 (1964) 2
White v. *Weiser*, 412 U.S. 783 (1973) 25

Constitution and statute:

U.S. Const.:
Art. I, § 4 (Elections Clause) 2
Amend. XIV 9, 24
Equal Protection Clause 26
Voting Rights Act of 1965, § 2, 42 U.S.C. 1973 ..... *passim*

In the Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-743

JAMES R. KING, APPELLANT

v.

STATE BOARD OF ELECTIONS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

MOTION TO AFFIRM

Pursuant to Rule 18.6 of the Rules of this Court, the Solicitor General, on behalf of the United States, moves that the judgment of the district court be affirmed.

OPINIONS BELOW

The opinions of the three-judge district court (J.S. App. 4-58, 60-74) are unreported.

JURISDICTION

The judgment of the district court was entered on August 1, 1997. A notice of appeal (J.S. App. 1-2) was filed on August 29, 1997, and the jurisdictional statement was filed on October 28, 1997. On November 18, 1997, the Clerk of the Court extended the time within which to file a response to and including December 30, 1997, and, on December 30, 1997, Justice Stevens further extended the

time within which to file a response to and including January 7, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. 1253.

STATEMENT

This case involves a constitutional challenge to the configuration of District Four in Illinois' 1991 congressional districting plan. That plan was ordered by a three-judge federal district court after the state legislature failed to redistrict following the 1990 census. *Hastert* v. *State Bd. of Elections*, 777 F. Supp. 634 (N.D. Ill. 1991). District Four is located in the City of Chicago and parts of suburban Cook County and contains a 59% Hispanic voting-age majority. The *Hastert* court believed that, without such a district, Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973, would be violated because Hispanic voters would not have a meaningful opportunity to elect the candidate of their choice. This appeal involves the subsequent decisions of a different three-judge district court (containing two of the three judges who sat on the earlier three-judge court), which upheld the configuration of District Four against constitutional challenge in March 1996, and reaffirmed its decision in August 1997, on remand from this Court for reconsideration in light of *Shaw* v. *Hunt*, 116 S. Ct. 1894 (1996) (*Shaw II*), and *Bush* v. *Vera*, 116 S. Ct. 1941 (1996).

1. The Elections Clause of the United States Constitution, Art. I, § 4, vests in state legislatures the initial responsibility for drawing congressional districts. In this century, however, the Illinois legislature has rarely exercised that responsibility.[1] Following the 1990 census,

---

[1] See *Colegrove* v. *Green*, 328 U.S. 549 (1946) (litigation arising from Illinois' failure to redistrict between 1901 and 1945). Since this Court's decision in *Wesberry* v. *Sanders*, 376 U.S. 1 (1964), which applied the one-person/one-vote standard to congressional districting,

the Illinois legislature again abdicated its responsibility. As a result of that census, the State was apportioned only 20 seats in Congress, a reduction from 22 in the previous decade. J.S. App. 17. Under Illinois law, the State's General Assembly was "charged with the obligation of implementing a constitutionally sound congressional redistricting plan by June 30, 1991." *Hastert*, 777 F. Supp. at 638. But the legislature "did not bring any redistricting proposal to the floor for debate, much less a vote." *Ibid.*

In light of the legislature's failure to act, five sets of plaintiffs filed suit in the United States District Court for the Northern District of Illinois. J.S. App. 17-18.[2] Each set of plaintiffs sought an order directing the State to hold elections under a constitutionally adequate, court-drawn redistricting map. *Ibid.* In addition, one group of plaintiffs contended that demographic and population changes since 1980 required the drawing of a majority-Hispanic district in order to comply with Section 2. *Hastert*, 777 F. Supp. at 638. The court granted the Illinois State Board of Elections leave to participate as a nominal defendant, which

---

the State's legislature has never enacted a congressional redistricting plan. See *In re Illinois Congressional Districts Reapportionment Cases*, No. 81-C-3915 (N.D. Ill. Dec. 3, 1981) (creating five majority African-American state legislative districts), aff'd mem. *sub nom. Ryan* v. *Otto*, 454 U.S. 1130 (1982); *Skolnick* v. *State Electoral Bd.*, 336 F. Supp. 839, 871 (N.D. Ill. 1971) (three-judge court).

[2] Plaintiffs were the Republican members of the State's congressional delegation (the Hastert plaintiffs); a group of Hispanic and African-American residents (the Nieves plaintiffs); a group of voters acting on behalf of the Democratic members of the State's congressional delegation (the Rosebrook plaintiffs); Democratic Representatives Cardiss Collins and Charles Hayes (the Collins plaintiffs); and the Chicago Urban League, on behalf of the African-American voters in the State's three majority-black congressional districts. J.S. App. 18. Several other voters and Members of Congress intervened as plaintiffs, as did the Harold Washington Party. *Hastert*, 777 F. Supp. at 639.

would be bound by the judgment but would neither put on a defense to liability nor participate in remedial proceedings. *Id.* at 639.

Because the State's existing congressional redistricting plan was clearly "unconstitutional and impracticable" following the 1990 census, the only issue before the court was what plan to order as a remedy. *Hastert*, 777 F. Supp. at 641. In order to prevent a delay in the State's election schedule, the district court streamlined proceedings by limiting each party to presenting a single proposed redistricting plan at trial, and by limiting trial to two days. *Id.* at 639-640. The parties, in turn, "worked diligently during discovery and the two-day trial to resolve numerous areas of significant disagreement in their competing plans." *Id.* at 640.

In particular, all parties agreed "that population and demographic changes within the City of Chicago from 1980 to 1990 mandated the creation of an Hispanic majority district" to satisfy Section 2. *Hastert*, 777 F. Supp. at 640. During the 1980s, the Hispanic population in Chicago and Cook County had grown at a rate substantially greater than the State's overall population growth rate of 0.0357%. Chicago's Hispanic population had increased by 29.33%, to a total of 545,852. *Id.* at 649. In Cook County as a whole, the Hispanic population had grown by 39%, to a total of 694,194. *Ibid.*; Defendant-Intervenor Exhibit (hereinafter "D-I Exh.") 10.[3] Thus, 19% of Chicago's 1990 population of 2,783,726 was Hispanic. D-I Exh. 26, at 4.

For the most part, Hispanic persons in Chicago and Cook County live in one of "two dense enclaves, one on Chicago's near northwest side and another on the near southwest side." *Hastert*, 777 F. Supp. at 649; see also J.S.

---

[3] The ideal population for each of Illinois' 20 congressional districts following the 1990 census was 571,530. *Hastert*, 777 F. Supp. at 641 n.7.

App., Att. 1. Those areas are approximately one mile from one another at their closest points, and their residents share significant political, economic, and cultural interests. *Hastert*, 777 F. Supp. at 649; D-I Exhs. 20-24. Thus, "[t]he separation of the clusters is not indicative of the existence of two distinct communities, but appears to have occurred as a result of exogenous physical and institutional barriers." *Hastert*, 777 F. Supp. at 649. Taken together, those two areas contain sufficient Hispanic population after the 1990 census to form a voting-age majority in a congressional district. D-I Exh. 19, at 3. Under the then-existing districting plan, however, Chicago's Hispanic population had largely been divided among two majority-white districts. D-I Exh. 21, at 3-4. Because "Hispanic voters in Chicago were unlikely to be able to elect a congressional candidate of their choice without drawing a congressional map that included both the north and south Hispanic communities within the same district," D-I Exh. 29, at 3-4, the *Hastert* parties agreed that it was necessary to draw such a majority-Hispanic district in order to comply with Section 2.

The existing districting plan also included three Chicago-area districts with African-American majorities (Districts One, Two, and Seven). See *Hastert*, 777 F. Supp. at 646 n.19. In accordance with Seventh Circuit precedent suggesting that a reduction in minority voting strength in those areas might violate Section 2 of the Voting Rights Act, see *Ketchum* v. *Byrne*, 740 F.2d 1398, 1406 (1984), cert. denied, 471 U.S. 1135 (1985), the *Hastert* parties agreed to retain those three majority-black districts. See *Hastert*, 777 F. Supp. at 646-648 & n.19.

Because of population shifts in the intervening decade, the configurations of those three districts would differ somewhat from their outlines on the 1981 map. See *Hastert*, 777 F. Supp. at 646 n.19. Moreover, their

configurations would affect the configuration of the majority-Hispanic district, for the large concentrations of Hispanic population lay alongside areas included in the majority-black districts. D-I Exh. 29. In particular, for two decades District Seven had comprised an area running from downtown Chicago to the city's west side. See D-I Exhs. 18, 40, 41. Since 1981, its borders had extended from Lake Michigan on the east to the suburbs of Oak Park, Maywood, Bellwood, and Broadview on the west. See *ibid.*; *Hastert*, 777 F. Supp. at 648 n.24. As a result, the largely Hispanic areas on the near north and south sides were separated by a portion of District Seven linking downtown Chicago with the west side. See *ibid.*

The participants in the *Hastert* litigation considered several configurations for the four Chicago-area majority-minority districts. See generally D-I Exhs. 25, 29. In those configurations, the majority-Hispanic district was drawn in one of three general ways. Some alternatives included a north-south Hispanic district that contained the cores of the Hispanic community and was surrounded on its eastern, southern, and western sides by District Seven. D-I Exhs. 25, 29F-29H. The parties rejected those alternatives, because they "violated numerous communities of interest by dividing Chicago's West Side and by creating an additional southwest connector for the Seventh District." D-I Exh. 29, at 6. At least two alternatives connected the predominantly Hispanic areas by including land along Lake Michigan to their east; under those scenarios, District Seven was bordered on its northern, eastern, and southern sides by the majority-Hispanic district. D-I Exhs. 25, 29B-29C. The parties rejected those alternatives, because one required the creation of two narrow connectors, and the other "violate[d] one of Chicago's most venerable communities of interest"

by dividing the "Bronzeville" area on the City's south side. D-I Exh. 29, at 4-5.

The parties ultimately proposed a plan "that connected the north and south side Hispanic communities through a western connector." D-I Exh. 29, at 5; see D-I Exhs. 25, 29D, 29I. Under that map, District Seven continued to extend from Lake Michigan to the western suburbs, but it was bounded to the west by the majority-Hispanic district's western connector. That plan "preserved the integrity of major communities of interest on the south and west sides of Chicago and developed a connector that included minimal population." D-I Exh. 29, at 5. And many of the areas included in the connector (*e.g.*, parks and vacant land) "constitute[d] natural boundaries." *Id.* at 6. Although the other alternatives would have created "a more compact Hispanic congressional district, without causing retrogression to the three African-American districts," the participants in *Hastert* all agreed to the western connector configuration in order to address concerns raised by District Seven's incumbent "regarding the shape of her district." D-I Exh. 25, at 4-5.

Because of the extensive pretrial negotiations, the *Hastert* trial focused on consideration of two proposed redistricting plans—one offered by the Hastert plaintiffs and the other offered by the Rosebrook plaintiffs. *Hastert*, 777 F. Supp. at 640, 641 & n.8. Both plans incorporated a majority-Hispanic district using a western connector. *Id.* at 648 & nn.22, 24. Both proposals also preserved Districts One, Two, and Seven with African-American voting-age majorities, and they did so "in almost identical fashion." *Id.* at 646-647. In an opinion issued on November 6, 1991, the *Hastert* court ordered the State to hold elections under the plan put forward by the Hastert plaintiffs. *Id.* at 662. The court found that the Hastert plan better satisfied the one-person/one-vote requirement (*id.* at 644-645, 662), was

"marginally superior to the *Rosebrook* plan" in affording minority voters an opportunity to elect the candidates of their choice (*id.* at 648, 651, 662), and was "likely to produce a fair distribution of congressional seats across party lines" (*id.* at 662).

Under the plan adopted by the court, District Four is 65.03% Hispanic in total population and 59.18% Hispanic in voting-age population. *Hastert*, 777 F. Supp. at 648 n.22. More than 95% of its total population, and 96.9% of its Hispanic population, is located in the two core areas on the near north and south sides; the connector contains only 4.3% of the district's total population and 3.1% of its Hispanic population. D-I Exh. 4, at 6. Although "all parties agree[d] that [Section] 2 of the Voting Rights Act * * * require[d] the creation of an Hispanic district," the district's "extraordinary configuration" prevented the court from "accept[ing] this conclusion without scrutiny." *Hastert*, 777 F. Supp. at 648. Thus, the *Hastert* court conducted its own independent review before determining that the proposed district was necessary to prevent a Section 2 violation. See *id.* at 649-651.

Applying the test in *Thornburg* v. *Gingles*, 478 U.S. 30 (1986), the court first found that "the Chicago/Cook County Hispanic community is 'sufficiently large and geographically compact' to constitute a single district majority." *Hastert*, 777 F. Supp. at 649 (quoting *Gingles*, 478 U.S. at 50). It also found that "the Chicago/Cook County Hispanic community clearly is politically cohesive" and that "ethnic bloc voting patterns have thwarted the political interests of the Hispanic community." *Id.* at 650. In making those findings, the court relied on "previous adjudications that found the [Hispanic] community politically cohesive" and "[p]revious judicial findings demonstrating a paucity of Hispanic officials in city and state-wide elected political offices." *Ibid.* The court also

noted that ecological regression analyses conducted by two expert witnesses demonstrated significant polarized voting in Chicago along ethnic lines. *Ibid.* Having thus found the three *Gingles* preconditions satisfied, the *Hastert* court went on to find that the failure to draw a district with an Hispanic majority would violate Section 2 under the "totality of circumstances." *Ibid.* To make that finding, the court relied principally on the "judicially recognized history of discrimination, both past and recent, against the Chicago Hispanic community and its attendant impact on effective political participation and representation." *Ibid.*

2. Appellant James R. King, a resident of District Four, filed this action in February 1995. J.S. App. 5. He alleged that District Four, as adopted by the *Hastert* court, violates the Fourteenth Amendment standards of *Shaw* v. *Reno*, 509 U.S. 630 (1993) (*Shaw I*). J.S. App. 5-6.[4] On March 7, 1996, the three-judge court issued an opinion denying appellant's requests for preliminary and permanent injunctive relief. *Id.* at 4-58 (*King I*). The court recognized that neither the *Hastert* court's findings of fact nor its judgment could bind appellant under the principles of issue preclusion and claim preclusion. *Id.* at 12. The court did admit into evidence the *Hastert* court's findings of fact, and the court accepted those findings in the absence of a showing of clear error or changed factual circumstances. *Id.* at 12-16. However, the court did not limit appellant to the record developed by the parties in *Hastert*. Indeed, although the court took judicial notice of

---

[4] The court permitted several parties to intervene as defendants, including some parties who had participated in *Hastert* (District One's incumbent Representative Bobby Rush, Al Johnson, Neomi Hernandez, and the Chicago Urban League) and some who had not (Timuel Black, Elvira Carrizales, and the United States). J.S. App. 6 & n.4.

the evidence presented to the *Hastert* court in order to establish the evidentiary record on which that court relied to make its findings, the court did not even admit portions of the *Hastert* record as substantive evidence unless the parties in the instant action moved for the admission of a particular exhibit. *Id.* at 16. The district court also determined that the law of the case doctrine prevented it from disturbing the *Hastert* court's legal conclusions absent manifest error or an arguable change in decisional law. *Id.* at 16-17. Nonetheless, because both *Miller* v. *Johnson*, 515 U.S. 900 (1995), and *Shaw I* arguably changed the law, the court reviewed *de novo* the *Hastert* court's conclusion "that the district's extraordinary configuration was necessary to 'satisfy constitutional principles.'" J.S. App. 25.

On the merits, the district court held that a court-ordered redistricting plan must be held to at least as stringent a standard as this Court applied in *Miller* to legislatively drawn plans. J.S. App. 30-37. Applying *Miller*, the court held that strict scrutiny was warranted because "the only reasonable conclusion that can be drawn from the shape and demographics of the district is that racial considerations predominated over all other factors in the configuration of the Fourth Congressional District." *Id.* at 40. The district court imposed on the defendants the burden to prove that the district was narrowly tailored to serve a compelling interest. *Id.* at 30 & n.36.

The district court found that the defendants had carried their burden. The court concluded that a majority-Hispanic district was necessary to prevent a violation of Section 2. J.S. App. 47-53. The court held that the Hispanic community "was sufficiently numerous to constitute a majority in a properly drawn district" (*id.* at 50) and that "the *Hastert* court's finding of geographic

compactness was appropriate" (*id.* at 53). The court also found that the Chicago Hispanic community was politically cohesive and that the district drawn by the *Hastert* court has "protected the Hispanic community since 1991 from the invidious effects of racial bloc voting that, regrettably, retains its chokehold on the Chicago electorate." *Id.* at 55.[5] The court finally found that District Four was narrowly tailored to the interest in avoiding a Section 2 violation. *Id.* at 56-57. It noted that the *Hastert* court had "subjected the proposed plans to an exacting constitutional review and determined which plan would provide a better, more complete remedy for the Section 2 violation." *Id.* at 57. The court found that District Four did not contain an unnecessarily large Hispanic population and that its "extraordinary configuration" was necessary "to preserve shared communities of interest and protect the three African-American supermajority districts against impermissible retrogression" that would violate the Voting Rights Act. *Ibid.*

3. Appellant appealed the district court's March 1996 judgment in *King I* to this Court. On June 13, 1996, while that appeal was pending, the Court issued its decisions in *Shaw II* and *Bush*. The United States subsequently filed a motion in the *King I* appeal urging the Court to vacate and remand so that the district court might have the first opportunity to address the application of this Court's new decisions to the facts of this case. By order dated November 12, 1996, this Court vacated the district court's judgment and remanded the case "for further consideration in

---

[5] The district court did not review or supplement the *Hastert* court's finding that, under the totality of the circumstances, the failure to draw a district with an Hispanic majority would violate Section 2, because appellant did not challenge that finding of the *Hastert* court. J.S. App. 53.

light of" *Shaw II* and *Bush*. *King* v. *State Bd. of Elections*, 117 S. Ct. 429 (1996).

On remand (*King II*), the district court undertook "a full review of the underlying record" and reaffirmed its earlier factual findings. J.S. App. 61-62. The court also "carefully examined" *Shaw II* and *Bush* and found "both cases supportive of its analysis." *Id.* at 61. The court reaffirmed its earlier conclusions that strict scrutiny applies (*id.* at 62); that remedying a potential violation of, or achieving compliance with, Section 2 constitutes a compelling state interest (*id.* at 65); and that District Four is narrowly tailored to prevent a violation of Section 2 (*id.* at 65-73).

With respect to the issue of narrow tailoring, the court specifically determined that there is "a 'strong basis in evidence' for finding the threshold conditions for [Section 2] liability" (J.S. App. 67), that District Four "remedies the anticipated violation and achieves [S]ection 2 compliance" (*id.* at 72), and that the consideration of race reflected in the district's configuration "is no more than reasonably necessary to fulfill its remedial purpose" (*id.* at 73). Finding nothing in *Shaw II* or *Bush* that would require amending or altering its decision in *King I*, the district court again concluded in *King II* that District Four "passes constitutional muster." *Ibid.*

ARGUMENT

The district court's judgment should be affirmed. The court carefully and correctly applied the governing legal principles set out by this Court to the facts and circumstances of this case. Applying strict scrutiny to District Four, the district court found that drawing a majority-Hispanic district in Chicago and Cook County was necessary to prevent a violation of Section 2 of the Voting Rights Act. In reaching that conclusion, the

district court did more than reaffirm the *Hastert* court's earlier findings that the preconditions to a Section 2 violation existed and that, absent a district with an Hispanic majority, a violation was confirmed by the totality of circumstances. The district court also engaged in its own analysis of the record and found that the *Hastert* court's determinations were both well supported by the evidence before that court and confirmed by more recent evidence. The court also found that District Four properly prevented the Section 2 violation and that its configuration is necessary to serve that compelling interest, while at the same time protecting communities of interest and complying with the Voting Rights Act's requirement that African-American voters be assured an equal opportunity to elect the representatives of their choice. Those findings amply support the district court's conclusion that District Four satisfies the narrow tailoring standards set forth in *Shaw II* and *Bush*.

1. Although "[s]trict scrutiny remains, nonetheless, strict," *Bush*, 116 S. Ct. at 1961 (plurality opinion), this Court has rejected "the notion that strict scrutiny is 'strict in theory, but fatal in fact.'" *Adarand Constructors, Inc.* v. *Peña*, 515 U.S. 200, 237 (1995) (citation omitted). A congressional district will survive strict scrutiny if its delineation is narrowly tailored to serve a compelling state interest. See *Bush*, 116 S. Ct. at 1960 (plurality opinion); *Shaw II*, 116 S. Ct. at 1902; *Miller*, 515 U.S. at 920. Here, the district court correctly found that District Four is narrowly tailored to serve the compelling interest of avoiding a violation of Section 2. J.S. App. 46-57.[6]

---

[6] Appellant incorrectly asserts (J.S. 27-28) that the district court placed the burden of establishing the lack of a compelling interest and narrow tailoring on the plaintiff. To the contrary, the court explicitly

a. This Court has held that remedying past discrimination is a compelling state interest. See *Shaw I*, 509 U.S. at 656; *Miller*, 515 U.S. at 920. Consistent with that holding, ensuring compliance with Section 2 is also a compelling state interest. See *Bush*, 116 S. Ct. at 1968 (O'Connor, J., concurring); *id.* at 1989 (Stevens, J., joined by Ginsburg & Breyer, JJ., dissenting); *id.* at 2007 (Souter, J., joined by Ginsburg & Breyer, JJ., dissenting). Such a compelling interest exists when there is "a strong basis in evidence for concluding that the *Gingles* factors are present." *Bush*, 116 S. Ct. at 1970 (O'Connor, J., concurring); see also *id.* at 1960-1961 (plurality opinion); *id.* at 1971 (Kennedy, J., concurring). Here, the district court found more than a "strong basis in evidence" that the preconditions for a Section 2 violation exist. The court found a majority-Hispanic district necessary to prevent an actual, proven violation of Section 2. J.S. App. 55-56.

The district court explained that the *Hastert* court examined each of the three *Gingles* preconditions, as well as the totality of the circumstances, and found that the failure to draw a district in Cook County with an Hispanic majority would dilute Hispanic voting strength in violation of Section 2. J.S. App. 47-57. The district court did not, however, rely solely on the *Hastert* court's findings. The court conducted an independent review of the evidence relating to the *Gingles* preconditions. It found that the Hispanic population in the Chicago area is sufficiently large and geographically compact "to constitute a majority in a properly drawn district" and that appellant had not provided any "competent evidence" to the contrary. *Id.* at 50 & n.58, 52-53. The district court also

---

held that, "once strict scrutiny is required, the burden shifts to the State defendants to prove that the racially drawn district is justified." J.S. App. 30; see also *id.* at 31 n.36.

found that Chicago's Hispanic community is politically cohesive and that appellant's contrary evidence "was mainly anecdotal, often incredible, and wholly insufficient to support the inferences and conclusions [appellant] seeks to draw." *Id.* at 50-51 & n.59. Finally, the court found that "ecological regression analysis and extreme case performance of forty-one elections held between 1983 and 1995 establish a definite and continuing pattern of white racial-bloc voting against Hispanic candidates." *Id.* at 51-52. Thus, the district court concluded that "the problems of racial bloc voting and exclusion of Hispanics from the powerfully important slating process remain." *Id.* at 52.

Those findings are sufficient to establish a compelling state interest. Without a majority-Hispanic district, members of the sizeable Hispanic population in Chicago and the rest of Cook County would lack a meaningful opportunity to elect the candidate of their choice in any single congressional district. Cf. *Johnson* v. *De Grandy*, 512 U.S. 997, 1011-1015 (1994); see also note 9, *infra*. The jurisdiction would thus have an electoral scheme that violates Section 2.

b. Appellant has not established that any of the factual findings by the district court are clearly erroneous. Appellant's contention (J.S. 13-15) that the district court erred in finding that the Hispanic population in Chicago and Cook County is geographically compact is unpersuasive. As the *Hastert* court found (777 F. Supp. at 649), the Hispanic population of Chicago and Cook County is concentrated in two dense enclaves located no more than a mile away from each other. These two areas comprise the bulk of the district contested here—more than 95% of its total population and almost 97% of its Hispanic population —and, taken together, alone contain a sufficient Hispanic population to form a voting-age majority in a congressional district. See pages 4-5, 8, *supra*.

The district court independently reaffirmed the *Hastert* court's finding. The court explained that "a fairly small rectangle can be drawn around the two [Hispanic] enclaves on the near northwest and near southwest sides of the city that would include a substantial majority of the Hispanic population within the City of Chicago. This rectangle serves as evidence of the Hispanic community's geographic compactness." J.S. App. 43 n.48; *id.* at 67-68. Appellant's response that the rectangle is not coextensive with District Four (J.S. 14) improperly equates the compactness of an area's minority population with the compactness of the district created to serve that population. "The first *Gingles* condition refers to the compactness of the minority *population*, *not* to the compactness of the contested *district*." *Bush*, 116 S. Ct. at 1971 (Kennedy, J., concurring) (emphases added); see *Gingles*, 478 U.S. at 50.

Appellant's argument (J.S. 15-16) that Hispanics are not sufficiently numerous to constitute a majority of voting-age *citizens* in a congressional district is equally unavailing. In support, appellant points only to the testimony of his own witness, who stated that District Four, as drawn, had an Hispanic citizen voting-age population of no more than 45%. This Court has explicitly reserved the question of "which characteristic of minority populations (*e.g.*, age, citizenship) ought to be the touchstone for proving a dilution claim and devising a sound remedy." *De Grandy*, 512 U.S. at 1008. The district court properly declined to resolve that question here, for appellant did not "establish[] via competent evidence that the Hispanic citizen voting age population falls below fifty percent" in District Four. J.S. App. 50. The court found "too many uncertainties surrounding the validity of the data" reported by appellant's witness to credit the witness's conclusion. *Id.*

at 50 n.58.[7] The district court's finding is not clearly erroneous. The 1992 and 1994 congressional elections, in which District Four elected an Hispanic to Congress (*id.* at 5), indicate that Hispanic voters in the district are numerous enough that they "ha[ve] the potential to elect a representative of [their] own choice"—the focus of the first *Gingles* precondition (*id.* at 47-48, quoting *Growe* v. *Emison*, 507 U.S. 25, 40 (1993)). See also *Bush*, 116 S. Ct. at 1970 (O'Connor, J., concurring) (reasonably compact districts containing 44% and 45.6% African-American population demonstrate that African-Americans are sufficiently numerous to satisfy first *Gingles* precondition).

Appellant also fails (J.S. 16-19) to demonstrate that the district court's finding of racial bloc voting was erroneous. The district court correctly found that appellant's claim that white racial bloc voting is not a problem is not "supported by recent city-wide election results or meaningful statistical analysis." J.S. App. 51. The court instead credited testimony supported by regression and extreme case analysis that "establish[ed] a definite and continuing pattern of white racial-bloc voting against Hispanic candidates." *Id.* at 51-52. Despite appellant's

---

[7] Citizenship data were unavailable at the time of redistricting. J.S. App. 50 n.58. Moreover, the Census Bureau reports citizenship data only at the census block group level, not at the smaller census block level at which the district lines were drawn. Thus, appellant's estimate of the Hispanic citizen population in District Four may not properly account for variations in citizenship levels among different blocks. *Ibid.* The witness's precinct-by-precinct citizenship estimate also generated several anomalies that cast further doubt on its accuracy; for example, he estimated that the Hispanic citizen voting-age population was *larger* than the Hispanic voting-age population in 605 precincts. See Tr. 273-274; D-I Exh. 51. Finally, appellant's citizenship estimate did not take account of increases in the Hispanic citizen population in District Four since 1990 due to intervening naturalizations and an amnesty program. J.S. App. 51 n.58.

dissection of that testimony, appellant does not contradict its central finding that Hispanic candidates of choice have been unable to win in voting districts lacking an Hispanic majority.[8] That finding is sufficient to support the district court's conclusion that white bloc voting is a continuing problem.[9]

---

[8] The district court acknowledged that three Hispanic candidates have recently been elected in city-wide elections. The court explained, however, that two of the candidates won because the white vote split among several white candidates, and the third was slated by the dominant Democratic Party. J.S. App. 51. With that exception, the district court noted, "the Democratic Party has not slated an Hispanic candidate for alderman, state senate, state representative, or congress in any district with a white majority voting age population." *Ibid.*

[9] Appellant's attack on the *Hastert* court's finding that there would be a Section 2 violation without a majority-Hispanic district under the "totality of the circumstances" (J.S. 19-21) is not properly before this Court because appellant did not contest the finding in the district court, see J.S. App. 53. See, *e.g.*, *Duignan* v. *United States*, 274 U.S. 195, 200 (1927). In any event, appellant's argument lacks merit. The *Hastert* court properly relied on a "judicially recognized history of discrimination, both past and recent, against the Chicago Hispanic community and its attendant impact on effective political participation and representation." 777 F. Supp. at 650. Appellant's suggestion that the *Hastert* court could not rely in 1991 on judicial findings made in 1982 and 1984 is without support. The district court noted, moreover, that the *Hastert* court "found that this historical discrimination against the Hispanic community was on-going." J.S. App. 54-55. And the district court reaffirmed the *Hastert* court's conclusion on remand during its consideration of whether District Four is narrowly tailored to remedy the Section 2 violation. *Id.* at 68-69. The district court also found that political discrimination persisted even after 1991 in the form of "a definite and continuing pattern of white racial-bloc voting against Hispanic candidates" (*id.* at 51-52) and "exclusion of Hispanics from the powerfully important slating process" (*id.* at 52). Finally, appellant offers no countervailing evidence to suggest that Hispanics in fact enjoy equal political opportunity. And, unlike the situations discussed by this Court in *De Grandy*, 512 U.S. at 1011-1015 & n.10, in this case,

c. Appellant's contention (J.S. 6-12) that District Four is not narrowly tailored to the compelling interest in complying with Section 2 is also without merit. In *Shaw II* and *Bush*, this Court established two requirements for demonstrating that a district is narrowly tailored to the compelling interest in avoiding a Section 2 violation. First, the district must "substantially address[] the [Section] 2 violation." *Shaw II*, 116 S. Ct. at 1907. Second, if the district deviates substantially from the district that a court would hypothetically draw to remedy the Section 2 violation, that deviation must not be "predominantly attributable to gerrymandering that was racially motivated and/or achieved by the use of race as a proxy." *Bush*, 116 S. Ct. at 1961 (plurality opinion); *id.* at 1970 (O'Connor, J., concurring). District Four satisfies both those criteria.

First, District Four "substantially addresses the [Section] 2 violation." *Shaw II*, 116 S. Ct. at 1907. District Four includes both of the geographically proximate compact areas of Hispanic population that require the creation of a majority-Hispanic district under Section 2. Those two areas are left wholly intact by the district; form the geographic core of the district; contain more than 95% of the district's total population; and are located close together, approximately one mile from each other. As the district court found, District Four has served its remedial purpose well and "has protected the Hispanic community since 1991 from the invidious effects of racial block voting that, regrettably, retains its chokehold on the Chicago electorate" (J.S. App. 55) by enabling the community to elect the candidate of its choice in each election since 1991.

---

absent a majority-Hispanic district, the Hispanic population of Chicago and Cook County would be unable to elect the candidate of its choice in any single-member district.

Second, to the extent that District Four substantially deviates from a hypothetical Section 2 district, the deviations are not "predominantly attributable to gerrymandering that was racially motivated and/or achieved by the use of race as a proxy." *Bush*, 116 S. Ct. at 1961 (plurality opinion). Rather, District Four presents the unobjectionable "case of an otherwise compact majority-minority district that is misshapen by predominantly nonracial, political manipulation." *Id.* at 1962.

The district's most significant deviation is its linking of the two closely aligned core areas by using a western connector, rather than by joining those two sections at their closest points.[10] The use of the western connector was not improperly motivated by racial considerations. Rather, it was motivated by essentially political considerations, primarily the desire to avoid either disruption of District Seven, which lies between the core Hispanic areas, or division of various other communities of interest.

Contrary to appellant's suggestion (J.S. 10-11), the western connector was not included in order to increase

---

[10] Appellant also complains about "the 'ragged' boundary surrounding the district" (J.S. 29), which he attributes to its being drawn on the census block level (see also J.S. 11-12), the promontory points on the north and south sections of the district that capture additional Hispanic population (J.S. 12), and "excessive" splitting of political subdivisions (J.S. 7-9). But drawing the district at the census block level was necessary to comply with the strict one-person/one-vote requirement. Tr. 216-217. And appellant has not shown that the resulting "raggedness," the inclusion of the two promontory points, or the number of split subdivisions results in any substantial deviation from a hypothetical remedial district. Indeed, the district court specifically found that the number of split subdivisions was not excessive but comparable to other Illinois congressional districts. J.S. App. 45, 72 & n.5. See also *Gingles* v. *Edmisten*, 590 F. Supp. 345, 374 (E.D.N.C. 1984) (three-judge court) (remedial district need not be "a model of aesthetic tidiness"), aff'd in part, rev'd in part *sub nom. Thornburgh* v. *Gingles*, 478 U.S. 30 (1986).

the Hispanic composition of District Four. Indeed, a majority-Hispanic district could equally well have been created by connecting the two core areas either at their closest points in the center or by use of an eastern connector,[11] as proposed in several alternative plans. See D-I Exhs. 29F-29H. The two dense areas making up the core of District Four themselves contained sufficient Hispanic population to constitute a majority in a congressional district, regardless of which type of connector was used. See page 5, *supra*.[12] Because District Four enclosed both of those core areas, there was no need to draw a connector on the basis of race in order "to make up for minority populations closer to [the district's] core that it

---

[11] Nothing in this Court's precedents supports appellant's suggestion (J.S. 11, 14) that the need for *any* connector precludes a finding that the minority population is sufficiently compact to require creation of a majority-minority district.

[12] The district in this case is thus factually quite distinct from the districts invalidated in *Shaw II* and *Bush*, which joined numerous, widely dispersed African-American populations. For example, one North Carolina district, "approximately 160 miles long and, for much of its length, no wider than the [Interstate]-85 corridor," "wind[ed] in snakelike fashion" through such diverse areas as tobacco farms and manufacturing centers "until it gobble[d] in enough enclaves of black neighborhoods." *Shaw II*, 116 S. Ct. at 1899 (quoting *Shaw I*, 509 U.S. at 635-636). In the Texas case, the district had only half of its population in a fairly compact core and otherwise consisted of seven "narrow and bizarrely shaped tentacles" extending out in various directions "only to pick up a small * * * area with a high African-American concentration." *Bush*, 116 S. Ct. at 1954-1955 (plurality opinion). District Four, in contrast, is the smallest in area of all the 1991 Illinois congressional districts (J.S. App. 101), and the connector contains a lower concentration of Hispanics than the rest of the District (see page 8, *supra*) and primarily vacant unpopulated land (J.S. App. 44 n.49).

shed in a further suspect use of race." *Bush*, 116 S. Ct. at 1961 (plurality opinion).[13]

The purpose of the connector was to create a contiguous district that would not disrupt the configuration of District Seven or other communities of interest. Contrary to appellant's contention (J.S. 11, 21-22), the desire to avoid disruption of District Seven's existing configuration is not equivalent to the desire to maintain the District's African-American population percentage. The alternative configurations—using a central or eastern connector—all maintained District Seven with at least a 65% black population. See D-I Exhs. 29B, 29C, 29E-29H. Those alternatives were rejected for nonracial reasons. They divided communities of interest, "disrupt[ed] the

---

[13] Appellant complains that, where the western connector goes through populated areas, "the mapmakers consistently sought out the highest percentage of Hispanic population" (J.S. 10) in order to "maximize the percentage of Hispanics" in the district (J.S. 11). Similarly, appellant complains (J.S. 12) that District Four's northern and southern promontory points were included in order to "capture additional Hispanic population" (J.S. App. 44) (emphasis omitted). Those contentions are not supported by the record and do not raise significant issues in any event. The *Hastert* court found, and the district court reaffirmed, that the Hispanic population in the two geographically proximate core areas having a shared community of interest was sufficiently large to constitute a voting majority in a single district, that a majority-Hispanic district must therefore be created in order to comply with Section 2, and that a western connector was the least intrusive way of uniting the two core areas into a single contiguous district. See pages 8-11, *supra*. Moreover, the population of the connector comprises only 4.3% of District Four's population and an even lower percentage of its Hispanic population. See page 8, *supra*. Given those facts, the inclusion of areas, in the connector or adjacent to the core areas, with populations likely to share the same (or a similar) community of interest as the population of the core areas is both consistent with traditional districting principles (see note 10, *supra*) and of minimal relevance to the overall composition of the district.

traditional connection between the African-American communities on the south and west sides of the City of Chicago" (D-I Exh. 18, at 4), and unnecessarily disturbed the existing configuration of District Seven, upsetting the relationship between the district's incumbent and her constituents. See D-I Exhs. 18, 25, 29. The parties and the court in *Hastert* drew District Four with a western connector to respond to those "predominantly nonracial, political" concerns (*Bush*, 116 S. Ct. at 1962 (plurality opinion)). See J.S. App. 57.

Especially illuminating on this point was the Declaration of Dr. James Hoffman Lewis of the Chicago Urban League (D-I Exh. 29). Dr. Lewis stated that the goal of the League (and other parties to the *Hastert* litigation) was to find "the most efficient means" of creating an "Hispanic-majority district that would not violate the integrity of the three existing African-American majority districts" (D-I Exh. 29, at 3), using "traditional districting principles such as consideration of location of communities of interest, historic cores of districts, and political structures" (*id.* at 4). He expressed concern that the use of an eastern connector would divide the "Bronzeville" area in southeast Chicago, disturbing "one of [the city's] most venerable communities of interest" (*id.* at 5), and the use of a central connector would disturb "numerous communities of interest by dividing Chicago's West Side" (*id.* at 6). He further stated that a western connector, on the other hand, allowed for the creation of a majority-Hispanic district while "preserv[ing] the integrity of [all] major communities of interest on the south and west sides of Chicago" (*id.* at 5).

Those considerations were of particular importance to the District Seven incumbent, who had represented that district since 1973. See Declaration of Congresswoman Cardiss Collins, D-I Exh. 31, at 1. Congresswoman

Collins emphasized the importance of the *Hastert* court's adoption of a redistricting plan that would ensure that communities "that have been a part of [her] district for three decades" continue as part of District Seven, and that would "preserve[], to the greatest extent possible, the historical boundaries" of her district. *Ibid.* Collins further noted that the residents of "both the city and the suburban portions of [her] district" are "highly cohesive politically" and "share a community of interests with respect to housing issues, public education issues, jobs, health care, and welfare that make it particularly appropriate that they be included in a single congressional district." *Id.* at 2. Those legitimate considerations were the predominant motivation for the adoption of—and fully justify—the present configuration of the majority-Hispanic District Four.

Section 2 required that a majority-Hispanic district be created because, *inter alia*, the Hispanic population is sufficiently compact that a geographically compact majority-Hispanic district *could* have been created by joining the two core areas at their closest point with a "central connector." Neither Section 2 nor the Fourteenth Amendment, however, requires that a remedial district be created precisely *in that manner*. "States are not prevented from taking into account race-neutral factors in drawing permissible majority-minority districts." *Bush*, 116 S. Ct. at 1972 (Kennedy, J., concurring). A district is still narrowly tailored if its departure from compactness is based on accommodation of neighboring districts for reasons consistent with traditional districting principles. The mere fact that the adjacent District Seven is majority-black does not negate the legitimate interest in accommodating that district, and it does not make the determination to accommodate that district an improper racial consideration. If District Seven had been

a majority-white district, the selection of the "western connector" in configuring District Four to accommodate the configuration of District Seven, and the retention of an electorate by an incumbent, would clearly have reflected legitimate, nonracial considerations. See *White* v. *Weiser*, 412 U.S. 783, 793-797 (1973) (incumbency protection is a legitimate districting principle); *Bush*, 116 S. Ct. at 1960 (Section 2 district need only be "*reasonably* compact and regular, taking into account traditional districting principles such as maintaining communities of interest and traditional boundaries"). Those legitimate, nonracial considerations are not rendered illegitimate because District Seven is majority-black.

The very nature of the proceedings in *Hastert* shows that the district court's primary objective was to ensure that the configuration of District Four accommodated as many as possible of the competing interests represented in that suit, while still uniting the Hispanic community in a single district. The five sets of plaintiffs in *Hastert* included African-American, Hispanic, and white voters, and also included both Democratic and Republican elected officials. The Illinois State Board of Elections chose to participate only as a nominal defendant, neither defending itself against liability nor taking part in the remedial phase of the case. The remaining parties, having submitted a variety of alternative redistricting plans to the court, engaged in extensive negotiations pursuant to streamlined procedures outlined by the court (see *Hastert*, 777 F. Supp. at 639) and ultimately agreed to submit for the court's review the two alternative plans which best satisfied all of their competing interests—both of which included a majority-Hispanic district using a western connector. The court chose the plan that, in its view, better satisfied the one-person/one-vote requirement; was "marginally superior" in affording minority voters an

opportunity to elect the candidates of their choice; and was most likely to result in "a fair distribution of congressional seats across party lines." *Id.* at 662.[14]

Under those circumstances, the district court correctly concluded that the configuration of District Four—particularly the use of the western connector—is a legitimate response to predominantly political concerns that traditionally are reflected in redistricting actions. See J.S. App. 70 n.4.[15]

2. Appellant's final contention (J.S. 22-26) is that the district court erred in treating him as bound by the findings in *Hastert*, thereby depriving him of "a *de novo* review of the evidence" as was his right as "a non-party to the [earlier] proceeding." J.S. 23. Contrary to appellant's implication, the district court explicitly acknowledged that the *Hastert* court's findings did not preclude appellant's claim or bind him on any issue. J.S. App. 12 & n.11. The district court properly recognized, however, that the *Hastert* proceedings are not irrelevant to appellant's cause of action.[16] Indeed, the *Hastert* proceedings are of central importance to appellant's claim. The only action of the State of Illinois that appellant challenges is

---

[14] Certainly it is not necessary for this Court to conduct a "beauty contest[]" between the two alternative plans presented to the *Hastert* court at trial. Cf. *Bush*, 116 S. Ct. at 1960 (plurality opinion).

[15] There is no merit to appellant's contention (J.S. 28) that District Four should have been subjected to scrutiny even more stringent than strict scrutiny because it was judicially created. The district court in this case applied the most demanding scrutiny that this Court has employed in considering Equal Protection Clause challenges.

[16] Appellant himself concedes (J.S. 23-24) that the evidence in *Hastert* is "relevant to this case not only because the *Hastert* court approved District [Four] but also because it found that the presence of the threshold conditions of *Gingles* and of the *Zimmer* factors established a [Section 2] violation."

its implementation of the districting plan ordered by the *Hastert* court. Thus, this "lawsuit is at its very core a challenge to the *Hastert* court's order." *Id.* at 14.

Under those circumstances, the district court quite correctly admitted into evidence the *Hastert* court's findings and properly took judicial notice of the record on which those findings were based. To determine whether the *Hastert* court's plan was subject to strict scrutiny, and, if so, whether District Four's configuration was justified by Section 2, the district court had to consider the *Hastert* court's actual purpose and the evidence before it at the time. See *Shaw II*, 116 S. Ct. at 1902 n.4, 1903; cf. *United States* v. *Virginia*, 116 S. Ct. 2264, 2277 (1996).

Contrary to appellant's suggestion, the district court did not limit appellant to the record established in *Hastert*, nor did it treat the *Hastert* court's findings as conclusive.[17] Although appellant complains (J.S. 22) that the court assigned too much weight to those findings by accepting them absent a showing of clear error or changed circumstances (see J.S. App. 16), appellant does not point to a single finding that was affected by that standard of review. To the contrary, the district court carefully considered the evidence adduced by appellant and in many cases found it wanting in terms that would disentitle him to relief under *any* standard.[18] In addition, although the

---

[17] Indeed, appellant acknowledges that he had the opportunity to submit a wide range of evidence not only bearing on the validity of the findings of the *Hastert* court but also going to the underlying issue of whether District Four is narrowly tailored to prevent a violation of Section 2. See J.S. 24.

[18] See J.S. App. 50 (appellant presented no "competent evidence" on the citizenship issue, and his evidence on the lack of political cohesion "was mainly anecdotal, often incredible, and wholly insufficient to support the inferences and conclusions [appellant] seeks to draw"); *id.* at 51 (as to racial bloc voting, "[n]either proposition advanced by

district court stated that the law of the case doctrine provided the appropriate standard for reviewing the *Hastert* court's legal conclusions, the district court reviewed the *Hastert* court's basic conclusion that District Four is necessary to satisfy constitutional and statutory requirements *de novo* because *Shaw I* and *Miller* changed the governing law. *Id.* at 25.

Appellant's criticism (J.S. 27 n.17) that the district court gave deference to the "*Hastert* court's discretion in selecting an appropriate remedy" (J.S. App. 56, citing *United States* v. *Paradise*, 480 U.S. 149, 183-185 (1987) (opinion of Brennan, J.)) is unpersuasive. On remand, the district court independently applied the standards set out in *Shaw II* and *Bush* to conclude that the remedy chosen by the *Hastert* court is narrowly tailored. J.S. App. 67-73. Even in its initial opinion, the district court found that the *Hastert* court's remedy "was properly proportioned to the nature of the violation" because it avoided Section 2 liability while preserving the three majority-black districts and protecting communities of interest. *Id.* at 57. In any event, deference to the *Hastert* court's remedial finding did not deprive appellant of anything to which he was legally entitled. Even if he had been a party in *Hastert* and had appealed its final judgment, some deference to the district court's remedial discretion would have been warranted. See *Paradise*, 480 U.S. at 183-185 (opinion of Brennan, J.). The fact that appellant did not participate in the earlier litigation does not dilute the *Hastert* court's remedial authority in discharging its "unwelcome obligation" (*Connor* v. *Finch*, 431 U.S. 407, 415 (1977)) to draw a constitutional districting plan after the state legislature

---

[appellant] is supported by recent city-wide election results or meaningful statistical analysis").

defaulted on its responsibility to do so. See also *Lawyer* v. *Department of Justice*, 117 S. Ct. 2186 (1997).

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General
BILL LANN LEE
Acting Assistant Attorney General
LAWRENCE G. WALLACE
Deputy Solicitor General
MATTHEW D. ROBERTS
Assistant to the Solicitor General
MARK L. GROSS
LOUISE A. LERNER
Attorneys

JANUARY 1998